***THE HON'BLE SRI JUSTICE C.V.NAGARDJUNA REDDY**

+WRIT PETITION No.20927 OF 1995

% Dated 10-10-2006

E.H.N. Reddy

Petitioner

VERSUS

$ The Vice Chairman & Managing Director,
APSRTC, Musheerabad, Hyderabad & others.

Respondents

! Counsel for Petitioner : Shri Sanjeev Kumar.

^Counsel for respondents : Shri R.Manmadha Reddy
(SC for APSRTC)

<GIST:

> HEAD NOTE:

? Cases referred

1. (1997) 7 SCC 463
2. (1995) 6 SCC 749
3. (2005) 7 SCC 338
4. (2006) 2 SCC 541

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

W.P. No. 20927 of 1995

Dated: 10.10.2006

Between:

E.H.N. Reddy

… Petitioner

AND

The ViceChairman & Managing Director,
APSRTC, Mushirabad, Hyderabad
& others.

… Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

W.P. No. 20927 of 1995

ORDER:-

The petitioner, who is a conductor in A.P. State Road Transport Corporation, was subjected to a check at Kavali while he was conducting the bus bearing No.AEZ-4567 on 29.10.1986 on Hyderabad to Nellore route. Consequent upon the same, a charge memo was issued to him on 03.11.1986 by the 4th respondent. Not being satisfied with the explanation offered by the petitioner, the 4th respondent ordered for a domestic enquiry. The enquiry officer, after holding enquiry, found the only charge framed against the petitioner proved. The petitioner was called upon to submit his explanation to the enquiry report. The 4th respondent, who is the disciplinary authority, after considering the explanation of the petitioner, through his proceedings No.02/104(40)86-NLR dated 17.03.1987, while agreeing with the findings of the enquiry officer, removed the petitioner from service with immediate effect and it was also directed that the petitioner's suspension period shall be treated as "not on duty" for all purposes and the petitioner's security deposit is forfeited to the corporation. Aggrieved by the said order, the petitioner filed a departmental appeal before the Divisional Manager, Nellore, who, after a detailed consideration of the appeal, modified the order of

punishment to the following effect:

> "1. For the irregularities committed by the appellant the basic pay of the appellant be reduced to the minimum pay of the conductor will have the effect on his future increments.
>
> 2. The appellant is not entitled for any back wages.
>
> 3. The intervening period from the date of suspension to the date of report for duty with medical fit certificate be treated as not on duty.
>
> 4. The appellant's reinstatement is subject to production of medical fit certificate from the authorities of Tarnaka, RTC, Hospital, Hyderabad, for the post of conductor.
>
> 5. On reinstatement the appellant is hereby posted to RPR depot."

Partly aggrieved by this order of the Divisional Manager, the petitioner filed a review before the Regional Manager. Through his order under proceedings No.PA/27(22)/89-RM(VSR) dated 30.05.1989, the Regional Manager rejected the review. Aggrieved by these orders, the present writ petition is filed.

Sri Sanjeev Kumar, learned counsel for the petitioner, submits that the charge, which is held proved, does not pertain to the misappropriation of any amount by the petitioner and that therefore, the punishment imposed by the Depot Manager is disproportionate to the gravity of misconduct of the petitioner.

To appreciate the contention of the petitioner, it is relevant to consider the material facts of the case. The charge against the petitioner is as follows:

> "For having reissued the ticket Nos.038/409900 and 49901 of s.15/- denomination (which were found

punched at stages 8 & 5 and accounted against stage No.8 in the SR) and 081/481776 and 777 of Rs.2/- denomination (which were punched at stages 8 & 6 to the passengers found traveling from Ongole to Nellore, ex-stages 4 to 1, which constitutes under Reg.28(xxiii) of APSRTC Employee (Conduct) Regulations".

It is clear from the record that when the petitioner was conducting the bus bearing No.AEZ 4567 on Hyderabad to Nellore route on 29.10.1986, the checking officials checked the vehicle at Kavali and found two passengers travelling with ticket numbers 038/409900 and 901 of Rs.15/- and 081/481776 and 777 of Rs.2/- denomination and it is also found that those passengers boarded the bus at Ongole and bound for Nellore. On verification, it was found that the said tickets were accounted against stage No.8 duly punched on stages 8 & 5 on the tickets of Rs.15/- denomination and on stages 8 & 6 of Rs.2/- denomination. The spot explanation given by the conductor was to the effect that at Vijayawada two lady passengers boarded the bus and they were bound for Medarametla and that he punched tickets worth Rs.17/- for each passenger, but after punching the tickets the lady passengers alighted the bus on the ground that the fare was high and there was no sitting accommodation. His further explanation was that as the tickets were punched, he accounted them in the S.R. and issued them to two passengers, who boarded at Ongole as nobody boarded at Guntur or Chilakaluripet. The petitioner further stated that as there were no passengers boarded at Vijayawada after the lady passengers alighted, he stopped the bus for 15 minutes to find any passenger boarding the bus for the purpose of giving away those tickets and as one M.L.A., who was travelling from Hyderabad got impatient over the delay, he allowed the bus to proceed further. As two passengers boarded the bus at Ongole, he gave the tickets to them with an endorsement on the reverse of the tickets to the effect that they were punched wrongly.

It is evident from the record that before the enquiry officer the petitioner admitted the charge as framed against him, but he pleaded to consider the circumstances under which he issued the tickets at Ongole. He deposed in the enquiry that the two passengers, who boarded the bus at Vijayawada and alighted, did not pay the requisite fare and that as he did not want to lose huge amount, he utilized the tickets by giving them to two passengers, who boarded at Ongole for their journey to Nellore.

The enquiry officer in his report observed that from the deposition of the petitioner and the spot statement given by the M.L.A. of Survepalli, it may be believed that after punching the tickets in question at Vijayawada for the two lady passengers, who boarded the bus at Vijayawada to travel up to Medarametla, the lady passengers have got down the bus without paying the fare, but however, the enquiry officer felt that the petitioner should not have reissued the tickets to the passengers, who boarded the bus at Ongole.

The Depot Manager agreed with the aforementioned findings of the enquiry officer. He also considered the explanation given by the petitioner, who was also afforded an opportunity of oral hearing and rejected the contention of the petitioner that the charge framed against him did not pertain to misappropriation and according to the Depot Manager the charge framed pertains to serious misconduct of the petitioner, who reused the tickets which were already issued for being used by earlier set of passengers. The appellate authority in his order while modifying the penalty held as under:

> "I have carefully gone through the record and appeal. Right from the spot explanation the appellant stated that two lady passengers have boarded at Vijayawada point and asked tickets for Medarametla.

> After punching the tickets the said two lady passengers got down the bus since there were no seats for them in the bus. The conductor by then has closed the SR. In support of this there is a letter given by Sri E. Ramakrishna Reddy, M.L.A., Sarvepalli stating that two lady passengers boarded the bus at Vijayawada point and got down duly returned the tickets to the appellant. The appellant tried to sale the punched tickets at Vijayawada and waited for some time. But nobody boarded the bus by then the delay has increased. The M.L.A. pressured the appellant to move the bus. The appellant's version that he could not sale these tickets before Medarametla because of nobody, got into the bus for the same denomination is not accepted as there is one Rs.20/- ticket and Rs.15/- ticket were punched at Guntur point. The TTIs observed that the tickets issued at Vijayawada are reissued at Ongole. From any angle his statement will not support his innocence or will not disprove his fraudulent moto. I strongly feel that the Depot Manager has done justice in dealing this case duly following all formalities of principles of natural justice. However, review of 'P' case of the appellant reveals that he has put in 15 years of service. He was once removed during the year 1976 through out his career for C & T irregularities and except 3 months deferment and two censures no other punishment was imposed on this appellant. A chance can be given to the employee in view of his long experience."

The aforementioned portion of the order of the appellate authority clearly shows that though he was not convinced about the innocence of the petitioner and was in full agreement with the findings of the enquiry officer and the disciplinary authority, has taken a lenient view in favour of the petitioner.

From the very conduct of the petitioner, it is evident that he sought to make use of invalid tickets by selling them to the passengers, who boarded the bus at Ongole, which admittedly is beyond Medarmetla up to which the two tickets were issued. This

itself clearly speaks of the mala fide intention of the petitioner. Though the charge as such has not an imputed misappropriation on the part of the petitioner, it is admitted by the learned counsel for the petitioner that Regulation 28(xxiii) of APSRTC Employees (Conduct) Regulations, 1964 (for short "the Regulations") pertains to reissue of tickets, which is a misconduct for which the petitioner is liable for a major penalty.

Whether the petitioner collected fare from the two lady passengers or not, in my view is not very material. The very fact that the tickets which were invalid, the moment the bus reached Medarmetla, were resold to two passengers, who boarded at Ongole, which is beyond Medarmetla, constitutes a grave misconduct on the part of the petitioner. Though the appellate authority held that from any angle the petitioner's statement will not support his innocence nor disprove his fraudulent motto, took a lenient view in imposing lesser punishment as enumerated above, instead of imposing a major punishment such as removal.

As regards, the imposition of punishment, it is well settled by the Apex Court in ***UNION OF INDIA v GANAYUTHAM***[1]***, OMKUMAR v UNION OF INDIA***[2]***, V. RAMANA v APSRTC***[3] ***and RAMSARAN v I.G.POTIA***[4] that unless the punishment imposed, shocks the judicial conscience of the Court, the penalty imposed would not be interfered with.

On the aforementioned facts and circumstances of the case, I am of the view that the punishment as modified by the appellate authority i.e., the Divisional Manager, Ongole, is not disproportionate to the gravity of the misconduct of the petitioner and hence, I am not inclined to interfere with the order of the appellate authority.

The writ petition is accordingly dismissed. No costs.

C.V. NAGARJUNA REDDY, J

Date: 10.10.2006
Note:- LR copy to be marked.
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[1] (1997) 7 SCC 463

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[3] (2005) 7 SCC 338

[4] (2006) 2 SCC 541